

109TH CONGRESS
2D SESSION

S. 3742

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2006

Mr. LOTT (for himself, Mr. CONRAD, Mr. SMITH, Mr. CRAPO, Mr. INOUE, Mr. HAGEL, Mr. NELSON of Nebraska, Mr. ISAKSON, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freight Rail Infra-
5 structure Capacity Expansion Act of 2006”.

1 **SEC. 2. CREDIT FOR FREIGHT RAIL INFRASTRUCTURE CA-**
 2 **PACITY EXPANSION PROPERTY.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to business-related credits) is amended by
 6 adding at the end the following new section:

7 **“SEC. 45N. FREIGHT RAIL CAPACITY EXPANSION CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,
 9 the freight rail capacity expansion credit determined under
 10 this section for the taxable year is an amount equal to
 11 25 percent of the cost of the following property placed in
 12 service during the taxable year:

13 “(1) New qualified freight rail infrastructure
 14 property.

15 “(2) Qualified locomotive property.

16 “(b) NEW QUALIFIED FREIGHT RAIL INFRASTRUC-
 17 TURE PROPERTY.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘new qualified
 19 freight rail infrastructure property’ means qualified
 20 freight rail infrastructure property—

21 “(A) the construction or erection of which
 22 is completed by the taxpayer after the date of
 23 the enactment of this section, or

24 “(B) which is acquired by the taxpayer
 25 after such date, but only if the original use of
 26 such property commences with the taxpayer.

1 “(2) EXCEPTION FOR PROPERTY REPLACING
 2 PROPERTY AT EXISTING LOCATION.—The term ‘new
 3 qualified freight rail infrastructure property’ does
 4 not include property which is replacing existing
 5 property if the property is located at the site of the
 6 existing property.

7 “(3) QUALIFIED FREIGHT RAIL INFRASTRUC-
 8 TURE PROPERTY.—

9 “(A) IN GENERAL.—The term ‘qualified
 10 freight rail infrastructure property’ means
 11 property used in the movement of freight by
 12 rail—

13 “(i) the cost of which is chargeable to
 14 capital account (determined without regard
 15 to section 179E), and

16 “(ii) which constitutes—

17 “(I) railroad grading or tunnel
 18 bore (as defined in section 168(e)(4)),

19 “(II) tunnels or subways,

20 “(III) track, including ties, rails,
 21 ballast, or other track material,

22 “(IV) bridges, trestles, culverts,
 23 or other elevated or submerged struc-
 24 tures,

1 “(V) terminals, yards, roadway
2 buildings, fuel stations, or railroad
3 wharves or docks, including fixtures
4 attached thereto, and equipment used
5 exclusively therein,

6 “(VI) railroad signal, commu-
7 nication, or other operating systems,
8 including components of such systems
9 that must be installed on locomotives
10 or other rolling stock, or

11 “(VII) intermodal transfer or
12 transload facilities or terminals, in-
13 cluding fixtures attached thereto, and
14 equipment used exclusively therein.

15 “(B) EXCLUSIONS.—The term ‘qualified
16 freight rail infrastructure property’ shall not in-
17 clude—

18 “(i) land,

19 “(ii) rolling stock, including loco-
20 motives, or

21 “(iii) property used predominantly
22 outside the United States, except that this
23 subparagraph shall not apply to any prop-
24 erty described in section 168(g)(4).

1 “(4) LEASED PROPERTY.—For purposes of de-
 2 termining whether property subject to a lease is new
 3 qualified freight rail infrastructure property, such
 4 property shall be treated as originally placed in serv-
 5 ice not earlier than the date the property is used
 6 under the lease but only if such property is leased
 7 within 3 months after the property is placed in serv-
 8 ice by the lessor.

9 “(c) QUALIFIED LOCOMOTIVE PROPERTY.—

10 “(1) IN GENERAL.—For purposes of this sec-
 11 tion, the term ‘qualified locomotive property’ means
 12 a locomotive which—

13 “(A) meets the Environmental Protection
 14 Agency’s emission standards for locomotives
 15 and locomotive engines (as in effect on Decem-
 16 ber 31, 2005), and

17 “(B) is owned by, or leased to, a taxpayer
 18 which meets the capacity expansion requirement
 19 of paragraph (2) for the taxable year in which
 20 the locomotive is placed in service.

21 “(2) CAPACITY EXPANSION REQUIREMENT.—A
 22 taxpayer meets the requirements of this paragraph
 23 with respect to any locomotive only if, on the last
 24 day of the taxable year in which such locomotive is
 25 placed in service, the total horsepower of all loco-

motives owned by, or leased to, the taxpayer exceeds the total horsepower of all locomotives owned by, or leased to, the taxpayer on the last day of the preceding taxable year. A determination under this paragraph shall be made pursuant to such reports as the Secretary, in consultation with the Surface Transportation Board, may prescribe.

“(3) SPECIAL RULES FOR THE LEASING OF LOCOMOTIVES.—In the case of the leasing of locomotives—

“(A) only the lessor is eligible for the credit, and

“(B) total horsepower under paragraph (2) shall be determined with respect to all locomotives owned by, or leased to, the lessee.

“(d) OTHER DEFINITIONS AND SPECIAL RULES.—

“(1) DEFINITIONS.—For purposes of this section—

“(A) RAILROAD SIGNAL, COMMUNICATION, OR OTHER OPERATING SYSTEM.—The term ‘railroad signal, communication, or other operating system’ means an appliance, method, device, or system (including hardware and software) which is used to operate a railroad or to improve safety or capacity of railroad oper-

1 ations, including a signal, an interlocker, an
 2 automatic train stop, or a train control or cab-
 3 signal device.

4 “(B) INTERMODAL TRANSFER OR
 5 TRANSLOAD FACILITY OR TERMINAL.—The
 6 term ‘intermodal transfer or transload facility
 7 or terminal’ means a facility or terminal pri-
 8 marily utilized in the transfer of freight be-
 9 tween rail and any other mode of transpor-
 10 tation.

11 “(2) COORDINATION WITH OTHER CREDITS.—
 12 The cost of any property taken into account in de-
 13 termining the credit under this section may not be
 14 taken into account in determining a credit under any
 15 other provision of this title.

16 “(3) BASIS ADJUSTMENT.—If a credit is deter-
 17 mined under this section with respect to the cost of
 18 any qualified freight rail infrastructure property or
 19 qualified locomotive property, the basis of such prop-
 20 erty shall be reduced by the amount of the credit so
 21 determined.

22 “(4) RECAPTURE.—The benefit of any credit
 23 allowable under subsection (a) shall, under regula-
 24 tions prescribed by the Secretary, be recaptured with
 25 respect to any qualified locomotive property that is

1 sold or otherwise disposed of by the taxpayer during
 2 the 5-year period beginning on the date on which
 3 such property is placed in service.

4 “(e) TERMINATION.—This section shall not apply to
 5 any property placed in service after December 31, 2011.”.

6 (b) CREDIT ALLOWED AS BUSINESS CREDIT.—Sec-
 7 tion 38(b) of the Internal Revenue Code of 1986 (relating
 8 to current year business credit) is amended by striking
 9 “and” at the end of paragraph (29), by striking the period
 10 at the end of paragraph (30) and inserting “, and”, and
 11 by adding at the end the following new paragraph:

12 “(31) the freight rail capacity expansion credit
 13 determined under section 45N.”.

14 (c) COORDINATION WITH SECTION 55.—Section
 15 38(c)(4)(B) of the Internal Revenue Code of 1986 is
 16 amended by striking “and” at the end of clause (i), by
 17 striking the period at the end of clause (ii)(II) and insert-
 18 ing “, and”, and by adding at the end the following new
 19 clause:

20 “(iii) for taxable years beginning after
 21 the date of the enactment of this clause,
 22 the credit determined under section 45N.”.

23 (d) CLERICAL AMENDMENT.—The table of sections
 24 for subpart D of part IV of subchapter A of chapter 1
 25 of the Internal Revenue Code of 1986 is amended by in-

1 serting after the item relating to section 45M the following
 2 new item:

“Sec. 45N. Freight rail capacity expansion credit.”.

3 **SEC. 3. EXPENSING OF FREIGHT RAIL INFRASTRUCTURE**
 4 **PROPERTY.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-
 6 ter 1 of the Internal Revenue Code of 1986 (relating to
 7 itemized deductions for individuals and corporations) is
 8 amended by inserting after section 179D the following new
 9 section:

10 **“SEC. 179E. ELECTION TO EXPENSE QUALIFIED FREIGHT**
 11 **RAIL INFRASTRUCTURE PROPERTY.**

12 “(a) ALLOWANCE OF DEDUCTION.—

13 “(1) IN GENERAL.—A taxpayer may elect to
 14 treat any amount paid or incurred for the acquisi-
 15 tion, construction, or erection of qualified freight rail
 16 infrastructure property (as defined in section
 17 45N(b)(3)) as an amount not chargeable to capital
 18 account. Any amount so treated shall be allowed as
 19 a deduction for the taxable year in which such prop-
 20 erty was placed in service.

21 “(2) COORDINATION WITH CREDIT.—The
 22 amount to which the election under paragraph (1)
 23 applies with respect to any property shall be reduced
 24 by an amount equal to the amount of any reduction
 25 in the basis of the property under section 45N(d)(3).

1 “(b) ELECTION.—An election under subsection (a)
 2 shall be made, with respect to each class of property for
 3 each taxable year, at such time and in such manner as
 4 the Secretary may prescribe by regulation. If a taxpayer
 5 makes such an election with respect to any class of prop-
 6 erty for any taxable year, the election shall apply to all
 7 qualified freight rail infrastructure property in such class
 8 placed in service during such taxable year. An election
 9 under this section shall not affect the character of any
 10 property for the purposes of section 45N.

11 “(c) DEDUCTION ALLOWED IN COMPUTING MINIMUM
 12 TAX.—For purposes of determining alternative minimum
 13 taxable income under section 55, the deduction under sub-
 14 section (a) for qualified freight rail infrastructure property
 15 shall be determined under this section without regard to
 16 any adjustment under section 56.

17 “(d) TERMINATION.—This section shall not apply to
 18 any property placed in service after December 31, 2011.”.

19 (b) DEDUCTION FOR CAPITAL EXPENDITURES.—
 20 Section 263(a)(1) of the Internal Revenue Code of 1986
 21 (relating to capital expenditures) is amended by striking
 22 “or” at the end of subparagraph (J), by striking the pe-
 23 riod at the end of subparagraph (K) and inserting “, or”
 24 and by adding at the end the following new subparagraph:

1 “(L) expenditures for which a deduction is
2 allowed under section 179E.”.

3 (c) TECHNICAL AND CLERICAL AMENDMENTS.—

4 (1) Section 312(k)(3)(B) of the Internal Rev-
5 enue Code of 1986 is amended by striking “or
6 179D” each place it appears in the text or heading
7 thereof and inserting “179D, or 179E”.

8 (2) Paragraphs (2)(C) and (3)(C) of section
9 1245(a) of such Code are each amended by inserting
10 “179E,” after “179D,”.

11 (3) The table of sections for part VI of sub-
12 chapter B of chapter 1 of such Code is amended by
13 inserting after the item relating to section 179D the
14 following new item:

 “Sec. 179E. Election to expense qualified freight rail infrastructure property.”.

15 **SEC. 4. EFFECTIVE DATE.**

16 The amendments made by sections 2 and 3 shall
17 apply to property placed in service after December 31,
18 2006.

